IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.570 OF 2003

IN

SUMM. SUIT NO.4041 OF 2002

Mr.B.K.Gupta .. Plaintiff

versus

Manmohan Singh Virdi .. Defendant

...

Mr.Denzil D'Mello for Plaintiff.

Mr. L.A.Kriplani for Defendant.

CORAM : D.G. KARNIK, J

DATED : 16th March 2005.

P.C:-

1. Heard learned counsel for the parties. Learned counsel for the plaintiff gives up the claim for interest prior to the date of filing of the suit.

2. There were negotiations between the plaintiff and the defendant regarding sale of the defendant's property. The plaintiff gave to the defendant a sum

of Rs.1,00,000/-by cheque pending negotiations of the sale along with the letter dated 3rd October, 1999. The letter states that in the event the transaction does not materialise the defendant would return to the plaintiff a sum of Rs.1,00,000/- within a period of three months. The transaction did not materialise and the plaintiff demanded the payment. As the defendant failed and neglected to make the payment the plaintiff has filed this suit. The defendant has signed at the bottom of the plaintiff's letter dated 3rd October, 1999 in confirmation of the contents thereof. The signature on this letter is not denied in the affidavit in reply. In the circumstances, under a written contract contained in the letter dated 3rd October, 1999 the defendant had agreed to refund to the plaintiff a sum of Rs.1,00,000/- in case the transaction did not materialise.

3. According to the defendant, the plaintiff owes to the defendant a sum of Rs.5,00,000/- and a cheque of Rs.5,00,000/- issued by the plaintiff has been dishonoured and therefore the defendant is not liable to pay him anything. Copy of the cheque is annexed at page 3 of the affidavit in reply. It shows that the cheque has been issued by Ankita Trust and not by the

plaintiff. The mere fact that the plaintiff has signed as a trustee has no relevance because the amount under the cheque would be due from different entity namely the trust and the plaintiff's signing of the cheque is in entirely different capacity.

4. The defendant also urges that by the minutes of the meeting dated 11th February 1999 held between the parties wherein some third parties were also present the plaintiff had agreed to pay to the defendant maintenance charges of Rs.500/- per month in respect of some other property. Though the meeting is denied by the plaintiff, assuming that there was meeting and Rs.500/- per month was due from the plaintiff from 11th February, 1999 (date of meeting) till the date of filing of the suit (6th March, 2003) the amount would come to about Rs.20,000/-. Therefore assuming that the defendant would be able to prove that he is entitled to recover some money from the plaintiff in pursuance of the meeting dated 11th February, 1999 such amount would not exceed Rs.20,000/-. The defendant has no defence for the balance sum to the extent of Rs.80,000/-.

5. In the circumstances, I am inclined to grant

conditional leave to defend the suit subject to deposit of Rs.80,000/-. The defendant is accordingly granted conditional leave to defend the suit subject to his depositing in this Court a sum of Rs.80,000/- within a period of four weeks. On such deposit the defendant shall be entitled to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master.

6. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant shall file the written statement within a period of one month.

D.G.KARNIK, J